

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: November 22, 2010
TO: Low Income Housing Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: Proposed Regulation Changes for 2011

Attached for public review and comment are the California Tax Credit Allocation Committee (TCAC) staff's proposed regulation changes for 2011. This summary memorandum highlights what TCAC staff's proposes for public review and comment. TCAC staff will conduct public hearings to discuss and solicit comments as follows:

Monday	Los Angeles
December 6, 2010	Ronald Reagan State Office Building 300 South Spring Street, Auditorium 10:00 a.m. to 12:00 p.m.
Wednesday	Oakland
December 8, 2010	Elihu Harris State Office Building 1515 Clay Street, Room 11 1:00 p.m. to 3:00 p.m.
Friday	Sacramento
December 10, 2010	State Treasurer's Office 915 Capitol Mall, Room 587 10:00 a.m. to 12:00 p.m.

In summary, the proposed changes are as follows:

Substantive Proposed Regulation Changes:

1. Eliminate the small development set-aside. **Section 10315(e), page 1 of the attached draft.**
2. Limit rural projects to no more than 20 percent (20%) of the at-risk set-aside. **Section 10315(f), page 2.**
3. Augment the existing special needs and single room occupancy (SRO) federal credit set-aside by two percent (2%). **Section 10315(g), page 2.**
4. Adjust the list of counties with Difficult to Develop Area (DDA) status within the nine percent (9%) credit program. **Section 10317(d), page 4**
5. Require that general partner capacity be maintained at the originally scored level for 15 years. **Section 10320(b)(2), page 4.**

6. Establish a “build and fill” policy for rural new construction tax credit applicants. **Section 10322(h)(9), page 5.**
7. Require that certifying public accountants and opining tax attorneys be independent third parties. **Section 10322(h)(16), page 5 and throughout.**
8. Limit RHS 515 eligibility letters to those received from the State RHS office. **Section 10322(i)(9), page 7.**
9. Convert HCD bridge loans made using ARRA funding into permanent loans. **Section 10323(d)(2)(D), page 8.**
10. Require public land contribution values be established by a current appraisal; require that public off-site contribution documentation for competitive scoring consist of waived fees only; score “tranche B” private loans capitalizing public rent subsidies as public funds. **Section 10325(c)(1)(C), page 9.**
11. Establish that general partner (GP) scoring shall be based upon projects wherein the applicant participated as GP within the last five years. Incorporate separate experience scoring criteria for special need and SRO projects. **Section 10325(c)(2)(A), page 10.**
12. Reorganize and scale social services scoring for projects, accounting for different resident populations and service packages. **Section 10325(c)(5)(B), page 14.**
13. Establish new scoring system for sustainable building methods. **Section 10325(c)(6), page 18.**
14. Require a lender-approved construction budget at the 180-day readiness deadline. **Section 10325(c)(8), page 23.**
15. Include, as a public funding source for the final tiebreaker, funds from a charitable foundation where a majority of their voting board is appointed by a public entity. Also, score land and improvement contributions by other charitable organizations. Finally score under the final tiebreaker public operating- or rent-subsidies. **Section 10325(c)(10)(A), page 24.**
16. Add energy efficiency and green-building features to the program’s minimum construction standards. **Section 10325(f)(7), page 26.**
17. When regional credit winners return their entire award, always return those credits to their region of origin. Also, account for origin of all set-aside and regional returned credits during the term of any 9% credit waiting lists. **Section 10325(h), page 27.**
18. Amend threshold basis limit increases to account for cost-inducing sustainable building improvements. **Section 10327(c)(5)(B), page 29.**

Clarifying or Conforming Proposed Regulation Changes:

1. Discontinue rural project’s access to the proposed-to-be-eliminated small development set-aside. **Section 10315(c), page 1 of the attached draft.**
2. Remove archaic HOME treatment certification. **Section 10322(h)(16), page 5.**
3. Eliminate duplicate submittal requirements at final reservation and require updated application reports. **Section 10322(i)(1), page 6.**

4. Placed-in-service provisions to cross-reference new proposed sustainable building compliance and verification requirements. **Section 10322(i)(2)(L), page 7.**
5. Clarify that Rural Housing Service (RHS) Section 514 and 515 funding is counted as public funds for scoring purposes. **Section 10325(c)(1)(C), page 9.**
6. Clarify that property management changes without notice or to less qualified management; fraudulent practices during project operation; and ARRA compliance violations may incur negative points within TCAC's competitions. **Section 10325(c)(3)(L)-(P), page 12.**
7. Correct an erroneous reference to high-speed internet capacity standards. **Section 10325(c)(5)(A)(10), page 13.**
8. Clarify that, in order to earn points, sponsors must commit project services for at least 10 years, but provide service provider letters committing to only one year. **Section 10325(c)(5)(B), page 14.**
9. Relocate several scoring options from the sustainable building category to a new, federal and state policies scoring category. **Section 10325(c)(9), page 24.**
10. Clarify that fixed-price contracts are antithetical to the program's limitations on contractor overhead, profit, and general requirements. **Section 10327(c)(1), page 29.**
11. Clarify that project cost and financing updates for second round reservation recipients are due at the 180-day readiness deadline, rather than the nearer-term carryover allocation deadline. **Section 10328(d)(1), page 32.**

Attachment

2011 Proposed Regulation Changes with Reasons
November 22, 2010

Section 10315(c)

Proposed Change:

(c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless:

- (1) They qualify and choose to compete in the ~~At-risk or Small Development~~ set-aside, in which case they will no longer be considered rural and will be evaluated as non-rural projects for purposes of these regulations; or
- (2) The Geographic Region in which they are located has had no other Eligible Projects for reservation within the current calendar year, in which case the rural project may receive a reservation in the last round for the year, from the geographic region in which it is located, if any.

Reason:

The proposed change conforms with the substantive proposed change to Section 10315(e). Eliminating the small development set-aside would make the proposed deleted reference archaic.

Section 10315(e)

Proposed Change:

~~(e) Small Development set-aside. Two percent (2%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects of twenty (20) or fewer units.~~

Reason:

TCAC staff no longer sees a compelling reason for a small development set-aside. In addition, as a class small developments are excessively costly on a per-unit basis. For example, in 2010 small developments proposing new construction were averaging approximately \$437,000 per unit. The average per-unit cost overall, including these small developments and acquisition/rehabilitation projects, was approximately \$339,000.

Under the current scoring and tiebreaker system, small developments do not appear to be at a significant systemic disadvantage relative to other set-aside or regional applicants. For example, four (4) of the nine (9) small developments awarded credits in 2010 won in a set-aside or region other than small development. Two of the 4 winners were funded within a region as the last-funded project. This was because their smaller credit request allowed them to win the remaining credits in the region, even with a lower tiebreaker score. This systemic advantage also argues against a special set-aside for such projects.

Section 10315(f) – (k)

Proposed Change:

~~(f)(e)~~ “At-Risk” set-aside. Five percent (5%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects that qualify as “At risk” pursuant to these regulations. No more than 20 percent (20%) of the at-risk set-aside shall be available to rural projects.

~~(g)(f)~~ Special Needs/SRO set-aside. ~~Two percent (2%)~~ Four percent (4%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects that qualify as Special Needs or Single Room Occupancy projects pursuant to these regulations. Any proposed homeless assistance project that applies and is eligible under the Nonprofit Set Aside, but is not funded, will be eligible to be considered under this Special Needs/SRO set-aside.

~~(h)(g)~~ Supplemental Set-Aside. An amount equal to three percent (3%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be held back to fund overages that occur in the second funding round set-asides and/or in the Geographic Apportionments because of funding projects in excess of the amounts available to those Set Asides or Geographic Apportionments, the funding of large projects, such as HOPE VI projects, or other Waiting List or priority projects. In addition to this initial funding, returned Tax Credits and unused Tax Credits from Set Asides and Geographic Apportionments will be added to this Supplemental Set Aside, and used to fund projects at year end so as to avoid loss of access to National Pool credits.

~~(i)(h)~~ Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below and must meet the applicable “additional threshold requirements” of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(10) in an effort to assure that no single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

<u>Housing Type</u>	<u>Goal</u>
Large Family	65%
Single Room Occupancy	15%
At-Risk	5%
Special Needs	15%
Seniors	15%

~~(j)(i)~~ Geographic Apportionments. Annual apportionments of Federal and State Credit Ceiling shall be made in approximately the amounts shown below:

<u>Geographic Area</u>	<u>Apportionment</u>
Los Angeles County	33%
Central Region (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare Counties)	10%
North and East Bay Region (Alameda, Contra	10%

Costa, Marin, Napa, Solano, Sonoma Counties)	
San Diego County	10%
Inland Empire Region (San Bernardino, Riverside, Imperial Counties)	8%
Orange County	8%
South and West Bay Region (San Mateo, Santa Clara Counties)	6%
Capital and Northern Region (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo Counties)	6%
Central Coast Region (Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Ventura Counties)	5%
San Francisco County	4%

~~(k)(i)~~ Credit available for geographic apportionments. Geographic apportionments, as described in this Section, shall be determined prior to, and made available during each reservation cycle in the approximate percentages of the total Federal and State Credit Ceiling available pursuant to Subsection 10310(b), after CTCAC deducts the federal credits set aside in accordance with Section 10315(a) through (h) from the annual Credit Ceiling.

Reason:

Besides updating the paragraph lettering with the removal of paragraph (e), small developments, this change would limit rural applicants for at-risk set-aside credits to no more than 20% of the at-risk set-aside. While acknowledging the importance of preserving truly at-risk rural projects, TCAC is concerned that rural projects disproportionately received at-risk credits within this statewide set-aside. Nine (9) of 19 (47%) at-risk set-aside applicants in 2010 were rural projects, while three (3) of the seven (7) awardees (43%) were rural. The proposed change would assure that ample credits remain to preserve non-rural projects that may be at a larger practical risk of converting to market rate properties than rural projects.

In addition, TCAC staff proposes increasing the special needs and single room occupancy (SRO) set-aside. Eliminating the two percent (2%) set-aside for small developments would allow adding the 2% savings to the existing 2% federal credit set-aside for special needs and single room occupancy (SRO) projects. This change would take the special needs / SRO federal credit set-aside to four percent (4%).

Staff considered as alternatives to adding the 2% savings to another set-aside or region, or cascading the savings among the regions. The 2% savings is relatively small. For example, in 2010 the annual set-aside for small developments was \$1.46 million. Cascading these dollars among the 10 regions, for example would have added an average of \$146,000 to each region. Such a small augmentation would have been unlikely to fund another project at all, and would not have prevented skipping large requests in most cases.

Among the set-asides, special needs / SRO is both chronically over-subscribed and extremely high-value as California cities and counties attempt to address homelessness. In addition, the Federal Strategic Plan to End Homelessness urged states to: “Encourage preferences in the awarding of Low Income Housing Tax Credits to increase investments for housing targeted to people experiencing or most at risk of homelessness.

Section 10317(d)

Proposed Change:

- (d) Credit Ceiling Applications: Applicants not eligible for the 130% basis adjustment may apply for an allocation of State credits in addition to federal Credit Ceiling credits. In addition, applicant projects eligible for the federal basis adjustment may elect to forgo the federal adjustment and apply for State credits in addition to the requested federal credits.

DDA Status of Specified Counties for ~~2010~~ 2011: Under authority contained in IRC Section 42(d)(5)(B)(v), for ~~2010~~ 2011 CTCAC additionally designates projects applying for Credit Ceiling credits in the following counties as requiring an increase in credit ceiling credits and therefore considers such projects as being within a difficult to develop area (DDA) as that term is used in IRC Section 42(d)(5)(B)(iii): ~~Alameda, Contra Costa, El Dorado, Placer, Sacramento, and San Joaquin~~ Fresno and San Luis Obispo.

Reason:

TCAC has administratively retained the DDA status for the six currently-listed counties for two years (2009 and 2010). During those years TCAC has run a significant surplus of State low income housing tax credits and has been grossly over-subscribed for federal credits. Retaining the affected counties' DDA status runs counter to TCAC's objective of utilizing all tax credit resources annually. In addition, TCAC is aware of investor interest in State credits. Therefore, TCAC staff recommends discontinuing the DDA status for 9% credit applicants in the stricken counties.

TCAC staff further recommends administratively holding two counties slated to lose their federal DDA status in 2011 as State-designated DDAs for purposes of accessing 9% credits. TCAC has eased the transition of such counties before (i.e., the now-proposed stricken counties) and proposes doing so again for one year.

Section 10320(b)(2)

Proposed Change:

- (b) Tax Credits and ownership transfers. No allocation of the Federal or State Credits, or ownership of a Tax Credit project, may be transferred without prior written approval of the Executive Director. Said approvals shall not be unreasonably withheld. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(3)(~~L~~)(M), in addition to other remedies.
 - (1) Any transfer of project ownership or allocation of Tax Credits shall be evidenced by a written agreement between the parties to the transfer, including agreements entered into by the transferee and the Committee.
 - (2) The entity acquiring ownership or Tax Credits shall be subject to a "qualifications review" by the Committee to determine if sufficient project development and management experience is present for owning and operating a Tax Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed information describing the experience and financial capacity of said persons, shall be provided to the Committee upon request. Any general partner change during the 15-year federal compliance period must be to a party earning equal capacity points pursuant to Section 10325(c)(2)(A) as the exiting general partner.

Reason:

Beside an updated cross-reference to Section 10325(c)(3), TCAC staff recommends new language requiring that any new general partners must score at least the same experience points as the exiting general partner. This requirement would only apply to project sponsors who competed successfully in a nine percent (9%) or four percent (4%) plus State credit competition. This clarifying change would assure consistency with the original project scoring for the entire federal compliance period.

Section 10322(h)(9)**Proposed Change:**

- (9) Market Studies. A full market study prepared within 180 days of the filing deadline by an independent 3rd party having no identity of interest with the development's partners, intended partners, or any other member of the Development Team described in Subsection (5) above. The study must meet the current market study guidelines distributed by the Committee, and establish both need and demand for the proposed project. If the market study does not meet the guidelines or support sufficient need and demand for the project, the application may be considered ineligible to receive Tax Credits. Regardless of market study data, CTCAC shall not reserve credits for a rural new construction application if a tax credit or other publicly-assisted project housing the same population is currently under development or in initial lease-up within the same market area.

Reason:

TCAC staff proposes a policy similar to USDA Rural Housing Services “build and fill” policy. TCAC would no longer award credits to a rural project if another affordable project is still under development or undergoing initial lease-up. This policy would only apply if the proposed project would be marketed to the same population as the project under development. For example, a project housing large families would not be funded if a large family project were currently under development within the same rural market area. If, at the time of application the earlier project is completed and has reached stabilized occupancy, TCAC would consider recommending the additional award. However, TCAC would independently verify that the first project had reached stabilized occupancy.

The proposed policy would only apply to new developments, and would not be invoked by circumstances where either rural project is occupied and being acquired and rehabilitated. Nor would this policy be invoked where one project is a senior-only project and one is a large family project.

Section 10322(h)(16):**Proposed Change:**

- (16) Eligible basis certification. A certification from a third party certified public accountant or tax attorney that project costs included in applicant's calculation of eligible basis are allowed by IRC Section 42, as amended, and are presented in accordance with standard accounting procedures. This must be delivered on the tax professional's corporate letterhead, in the prescribed CTCAC format.—~~If the project uses HOME Investment Partnership Program funds, then the tax professional must further certify as to the treatment of HOME Program funds for purposes of eligible basis calculations.~~

Reason:

The proposed “third party” language addition would require applicants to use an independent, third party certified public accountant (CPA) for the application's eligible basis certification. Most sponsors currently employ third party CPAs as part of a project's development team. This proposal clarifies that

documentation submitted from a CPA is to be prepared by an independent third party. The proposed deletion removes from TCAC regulations language that is no longer applicable. The Housing and Recovery Act of 2008 (H.R. 3221) eliminated the need for this requirement.

Section 10322(h)(19):

Proposed Change:

- (19) Tax Credit certification. If the Tax Credits are not to be syndicated, a letter from a third party certified public accountant establishing the Tax Credit factor.

Reason: Consistent with the proposed change to Section 10322(h)(16), TCAC seeks to assure independent CPAs are verify the correct federal credit factor where an equity partner is not involved.

Section 10322(i)(1):

Proposed Change:

- (i) Additional Subsequent application documents. In addition to all above requirements of this Section, the following documentation relevant to the proposed project is required to be submitted with applications having certain characteristics, as described below:
- (1) Final Reservation application. Applicants proposing a final reservation application shall provide the following unless previously submitted as a Readiness to Proceed requirement:
- ~~(A) the company name and contact person, address, telephone number, and fax number of the:~~
 - ~~(i) general contractor, and~~
 - ~~(ii) syndication firm or investor;~~
 - (BA) an executed construction contract;
 - (GB) recorded deeds of trust for all construction loan financing;
 - (DC) a current title report (dated no later than 30 days before the application deadline or no earlier than January 1st of the year in which the building must be placed-in-service as provided in section 10328(c), whichever applies);
 - (ED) binding commitments for permanent financing;
 - (FE) binding commitments for any other financing required to complete project construction;
 - (GF) a construction lender trade payment breakdown of approved construction costs; and,
 - (HG) an executed partnership agreement, or if not yet executed, a commitment letter between the applicant and investor verifying the expected equity raise, pay-in schedule and costs of syndication;
 - (IH) building permits;
 - (JI) a completed Final Reservation Status Report Form provided by the Committee updated application;
 - (KJ) a detailed explanation of any changes from the initial application; and
 - (LK) an updated development timetable as of Final Reservation filing date.

The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.

Reason:

Changes would remove final reservation documentation previously submitted as part of the readiness requirement. Applicants receiving full readiness points would submit final reservation documents including a title report, financing commitments not previously submitted with readiness, any partnership agreement amendments, an updated application explaining any changes, and an updated development timetable. Two current final reservation requirements, an executed construction contract and a lender-approved construction budget, are proposed as new readiness requirements below.

Section 10322(i)(2)(L)-(P) [Placed-in-service application]

Proposed Change:

- (L) If if applicable, a certification from a third party tax professional stating the percentage of aggregate basis (including land) financed by tax exempt bonds for projects that received Tax Credits under the provisions of Section 10326 of these regulations;
- (M) ~~a certification from the owner that all of the minimum construction standards of all documentation required pursuant to the Compliance and Verification requirements of Sections 10325(f)(7) and 10326(g)(6) have either been met or waived pursuant to these regulations;~~
- (N) all documents required pursuant to the Compliance and Verification requirements of Section 10327(c)(5)(B);
- (O) if seeking a reduction in the operating expenses used in the Committee's final underwriting pursuant to Section 10327(g)(1) of these regulations, the final operating expenses used by the lender and equity investor;
- ~~(O)(P)~~ a certification from the project architect that the physical buildings are in compliance with all applicable building codes and applicable fair housing laws; ~~and~~
- ~~(P)(Q)~~ a certification from the project architect that the sustainable building methods of section 10325(c)(6) have been incorporated into the project, if applicable. all documentation required pursuant to the Compliance and Verification requirements of Section 10325(c)(6), if applicable; and

Reason:

Consistent with earlier proposed changes, paragraph (L) would require that tax-exempt bond financing requirements be certified by an independent tax professional. The remaining conforming edits to the required placed-in-service submittals would appropriately cross-reference new minimum construction standards and correct citations. The substantive changes are contained in sections cited by these changes.

Section 10322(i)(3):

Proposed Change:

- (3) Acquisition Tax Credits application. Applicants requesting acquisition Tax Credits shall provide:
 - (A) a chain of title report;
 - (B) a third party tax professional's opinion stating that the acquisition is either exempt from or meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,
 - (C) if a waiver of the 10-year ownership rule is necessary, a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).

Reason:

Consistent with earlier proposed changes, TCAC staff proposes that tax opinions be provided by unrelated third party tax professionals.

Section 10322(i)(9)

Proposed Change:

- (9) Rural Set-Aside application. Applicants requesting Tax Credits from the Rural set-aside, as defined by H & S Code Section 50199.21 and Section 10315(c) of these regulations,

shall provide verification that the proposed project is located in an eligible rural area. ~~{Evidence that project is located in an area eligible for Section 515 financing from RHS shall be a~~ may be in the form of a letter from RHS's California state office.}

Reason:

TCAC has been advised by United States Department of Agriculture (USDA) Rural Housing Service (RHS) officials that only the California state office will be authorized to issue 515-eligibility letters, if necessary. The proposed regulation change would eliminate any confusion regarding RHS sources for such letters.

Section 10323(d)(2)(D)

Proposed Change:

- (D) Recaptured or returned TCAP funds shall be re-lent as 55-year loans, with an executed Promissory Note and secured by a Deed of Trust. Otherwise, the terms described in sub-section (e) apply. Notwithstanding the provisions of Section 10323(b)(3) in effect at the time of award, any TCAP loans awarded under the PMIB provisions shall not be repayable by financing from the State Department of Housing and Community Development (HCD). Rather, those loans shall be converted to permanent loans of 55 years in duration, with the HCD-required income targeting, operating and replacement reserves. The project must continue to comply with CTAC's other underwriting standards as described in Section 10327.

Reason:

TCAC has learned from the federal Department of Housing and Urban Development that any repaid Tax Credit Assistance Program (TCAP) loan repayments (program income) must be re-used for TCAP-eligible projects. This limits TCAP program income to projects that had tax credit reservations prior to September 30, 2009. Such projects in California have already either proceeded with development or have returned their credit reservation.

In light of federal restrictions on TCAP program income, TCAP funding would remain as permanent financing in the 25 projects and allow HCD to re-lend their program resources. Those HCD funds would return to the Joe Serna, Jr. Farmworker Program, the Multifamily Housing Program, and the Transit Oriented Development Program. Re-lending through these programs would promptly create new affordable housing and jobs associated with those developments.

Section 10325(c)(1)(A):

Proposed Change:

- (1) Leveraging
- (A) Cost efficiency. A project application for a new construction or an At-Risk development, or a substantial rehabilitation development where the hard costs of rehabilitation are at least \$40,000 per unit, whose total eligible basis is below the maximum permitted threshold basis limits after permitted adjustments, shall receive 1 point for each percent by which its eligible basis is below the maximum permitted adjusted threshold basis limit. In calculating the eligible basis under this scoring factor, CTCAC shall use all project costs listed within the application unless those costs are not includable in basis under federal law as demonstrated by the application form itself or by a letter from the development team's third party tax professional.

Reason:

TCAC staff is consistently proposing that all tax professional and CPA certifications come from independent third-parties.

Section 10325(c)(1)(C)

Proposed Change:

Section 10325. Application Selection Criteria - Credit Ceiling Applications

- (C) Public funds. For purposes of scoring, “public funds” include federal, state, or local government funds, including the outstanding principal balances of prior direct federal debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction, funds from a local community foundation, funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP), waivers resulting in quantifiable cost savings that are not required by federal or state law, or the value of land donated or leased by a public entity or donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline. Land and building values must be supported by an independent, third party appraisal, conducted in the year of the tax credit application, and otherwise consistent with the guidelines in Section 10322(i)(4)(A). All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded.

To receive points under this subsection for loans, loans must be “soft” loans, having terms in excess of 15 years, and below market interest rates, interest accruals, residual receipts payments or other preferred terms for at least the first fifteen years of their terms. RHS Section 514 or 515 financing shall be considered soft debt for scoring purposes in spite of a debt service requirement. Points for donated or leased land shall be calculated based on the lesser of the purchase price or appraised value, except that points for land owned by the public entity for more than three years prior to the application filing deadline shall be calculated based on its appraised value. Further, for points to be awarded under this subsection, there shall be conclusive evidence presented that any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land.

Public contributions of off-site costs shall not be counted competitively, unless documented as a waived fee pursuant to a nexus study and relevant State Government Code provisions regulating such fees. Similarly, if the principal balances of any prior publicly funded or subsidized loans are to be assumed in the course of a proposed acquisition, verification of approval of the loan assumption or other required procedure by the agency initially approving the subsidy will be needed to satisfy the commitment requirements.

Private “tranche B” loans underwritten based upon rent differentials attributable to rent subsidies shall also be considered public funding for purposes of the final tiebreaker. The amount of private loan counted for scoring purposes would be the lesser of the private lender commitment amount, or an amount based upon CTCAC underwriting standards. Standards shall include a 15-year loan term; an interest rate established annually by CTCAC based upon a spread over 10-year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent (5%) vacancy rate. In addition, the rental income differential for subsidized units shall

be established by subtracting tax credit rental income at 50 percent (50%) AMI levels (40% AMI for Special Needs/SRO projects) from the anticipated contract rent income documented by the subsidy source..

A maximum of 20 points shall be available in combining the cost efficiency, credit reduction, and public funds categories.

Reason:

The proposed new language would assure that publicly-contributed land values are accurately and fairly established. A current appraisal would prevent over-estimating land values due to local governmental agencies purchasing land at higher-than-market costs or by failing to account for declining local land values. TCAC is attempting to score land values based upon how much a project sponsor would have had to pay for the land in the current market. A current appraisal is the best method for estimating that value.

A second proposed change would codify TCAC's practice of counting RHS Section 514 and 515 financing in spite of those loan terms including "must pay" debt service. The current reference requires that loans be "soft," leaving unclear TCAC's scoring of RHS programs. However, the specified RHS programs provide helpful extremely low-interest, extended term financing that warrants competitive scoring. Therefore, TCAC considers those federal programs as the only exceptions to the "soft" loan requirement.

Proposed language would also establish that off-site improvements funded by public entities would not be counted competitively as public funding. Such publicly-developed or funded infrastructure improvements are very difficult to tie to the project and do not represent a development cost to be borne by the developer. Costs passed along to a developer in the form of legally established fees are clearly tied to the development. TCAC proposes to continue honoring fee waivers for such infrastructure as public funding for scoring purposes.

Finally, proposed language would codify TCAC's long-standing practice of scoring "tranche B" private loans underwritten based upon rental assistance. Additional language establishes TCAC underwriting standards for such loans and, thereby, the maximum loan amount that may be claimed competitively. The proposed standards represent TCAC's attempt to limit potential overstatements of private debt attributable to rental subsidy streams. The listed terms are presented as reasonable parameters accounting for typical lending practices on such revenue streams.

Section 10325(c)(2)(A)

Proposed Change:

- (2) General Partner/Management Company Characteristics.
No one general partner, party having any fiduciary responsibilities, or related parties will be awarded more than 15% of the Federal Credit Ceiling, calculated as of February first during any calendar year unless imposing this requirement would prevent allocation of all of the available Credit Ceiling.
 - (A) General partner experience. To receive points under this subsection for projects in existence for over 3 years, the applicant must submit a certification from a third party certified public accountant that the projects for which it is requesting points have maintained a positive operating cash flow, from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.) for the year in which each development's last financial statement has been prepared (which must be effective no more than one year prior to the application deadline) and have funded reserves in accordance with the partnership agreement and any applicable loan documents. To obtain points for projects previously owned by the proposed general partner, a similar certification must be submitted with respect to the last full year of ownership by the proposed general partner, along with verification of the

number of years that the project was owned by that general partner. To obtain points for projects previously owned, the ending date of ownership or participation must be no more than 5 years from the application deadline. This certification must list the specific projects for which the points are being requested. The certification of the third party certified public accountant may be in the form of an agreed upon procedure report that includes funded reserves as of the report date, which shall be dated within 60 days of the application deadline. Where there is more than 1 general partner, experience points may not be aggregated; rather, points will be awarded based on the highest points for which 1 general partner is eligible.

1-2 projects in service under 3 years	1 point/over 3 years	2 points
3-6 projects in service under 3 years	3 points/over 3 years	4 points
7 or more projects in service under 3 years	5 points/over 3 years	6 points

For projects applying through the Nonprofit set-aside or Special Needs set-aside only, points are available for special needs housing type projects only as follows:

<u>2 projects in service under 3 years</u>	<u>1 point/over 3 years</u>	<u>2 points</u>
<u>3 projects in service under 3 years</u>	<u>3 points/over 3 years</u>	<u>4 points</u>
<u>4 or more projects in service under 3 years</u>	<u>5 points/over 3 years</u>	<u>6 points</u>

(B) Management Company experience

2-5 projects in service under 3 years	0.5 point/over 3 years	1 point
6-10 projects in service under 3 years	1.5 points/over 3 years	2 points
11 or more projects in service under 3 years	2.5 points/over 3 years	3 points

For projects applying through the Nonprofit set-aside or Special Needs set-aside only, points are available for special needs housing type projects only as follows:

<u>1 projects in service under 3 years</u>	<u>0.5 point/over 3 years</u>	<u>1 point</u>
<u>2-3 projects in service under 3 years</u>	<u>1.5 points/over 3 years</u>	<u>2 points</u>
<u>4 or more projects in service under 3 years</u>	<u>2.5 points/over 3 years</u>	<u>3 points</u>

Points in subsections (A) and (B) above will be awarded in the highest applicable category and are not cumulative. ~~For maximum points in either subsection (A) or (B) above, a completed previous participation form for the general partner or for the management agent respectively must be provided in the application.~~ For points to be awarded in subsection (B), an enforceable management agreement executed by both parties for the subject application must be submitted at the time of application. "Projects" as used in subsections (A) and (B) means multifamily rental affordable developments of over 10 units that are subject to a recorded regulatory agreement, or, in the case of housing on tribal lands, where federal HUD funds have been utilized in affordable rental developments. General Partner and Management Company experience points may be given based on the experience of the principals involved, or on the experience of municipalities or other nonprofit entities that have experience but have formed single-asset entities for each project in which they have participated, notwithstanding that the entity itself would not otherwise be eligible for such points. Alternatively, a management company that provides evidence that the agent to be assigned to the project (either on-site or with management responsibilities for the site) has been certified prior to the application deadline pursuant to a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee, may receive 2 points. These points may substitute for other management company experience but will not be awarded in addition to such points.

In applying for and receiving points in this category, applicants assure that the property shall be managed by entities with equal experience scores for the entire 15-year compliance period.

Reason:

As stated above, the proposed “third party” language addition would require sponsors to utilize an independent, third party CPA in preparing a General Partner experience certification. Most sponsors currently employ third party CPAs as part of a project’s development team.

The proposed addition related to general partners’ previously owned projects sets a time limit on point-gathering experience. TCAC staff has reviewed applications that included General Partner experience points based entirely on previously owned projects, some with experience ending 5-10 years in the past. Setting a limit at 5 years from the application deadline provides a reasonable timeframe from which applicants may draw in order to receive General Partner experience points. The proposed “previous participation form” deletion removes from TCAC regulations archaic language. This form was eliminated as an application requirement in 2008.

Additional changes would establish a separate capacity scoring system for projects principally housing special needs populations. TCAC staff is aware of lower-volume special needs housing developers who are extremely capable developers and managers of that housing type. Such sponsors specialize in special needs housing and need not be as prolific as other housing type developers to demonstrate capacity. TCAC staff envisions proposing more substantial capacity-scoring revisions for 2012, but support this change as an interim refinement.

Proposed additional language clarifies that management capacity must be maintained at the scored level for the entire credit period. This assures that the full value of an experienced management team is realized over the long term. Recently, increasing project changes to less experienced management entities have resulted in more frequent compliance findings.

Section 10325(c)(3)(L)-(P)

Proposed Change:

- (3) Negative points. Negative points, up to a total of 10 for each project and/or each violation, may be given at the Executive Director’s discretion for general partners, co-developers, management agents, consultants, guarantors, or any member or agent of the Development Team as described in Section 10322(h)(5) for items including, but not limited to:
 - (A) failure to utilize committed public subsidies identified in an application, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant’s control;
 - (B) failure to utilize Tax Credits within program time guidelines, including failure to meet the 150 day readiness requirements, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant’s control;
 - (C) failure to request Forms 8609 for new construction projects within one year from the date the last building in the project is placed-in-service, or for acquisition/rehabilitation projects, one year from the date on which the rehabilitation was completed;
 - (D) removal or withdrawal under threat of removal as general partner from a housing tax credit partnership;
 - (E) failure to provide physical amenities or services or any other item for which points were obtained (unless funding for a specific services program promised is no longer available);

- (F) failure to correct serious noncompliance after notice and cure period within an existing housing tax credit project in California;
- (G) repeated failure to submit required compliance documentation for a housing Tax Credit project located anywhere;
- (H) failure to perform a tenant income recertification upon the first anniversary following the initial move-in certification for all one-hundred percent (100%) tax credit properties, or failure to conduct ongoing annual income certifications in properties with non-tax-credit units.
- (I) material misrepresentation of any fact or requirement in an application;
- (J) failure of a building to continuously meet the terms, conditions, and requirements received at its certification as being suitable for occupancy in compliance with state or local law, unless it is demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside the control of the owner;
- (K) failure to submit a copy of the owner's completed 8609 showing the first year filing;
- (L) failure to promptly notify CTCAC of a property management change or changing to a management company of lesser experience contrary to Section 10325(c)(2)(B).
- ~~(L)~~(M) failure to properly notify CTCAC and obtain prior approval of general or limited partner changes, transfer of a Tax Credit project, or allocation of the Federal or State Credit; ~~or,~~
- ~~(M)~~(N) certification of site amenities, distances or service amenities that were, in the Executive Director's sole discretion, inaccurate or misleading.
- (O) falsifying documentation of household income or any other materials to fraudulently represent compliance with IRC Section 42, or
- (P) failure of American Recovery and Reinvestment Act (ARRA) funded projects to comply with Section 42, CTCAC regulations, or other applicable program requirements.
- (Q) failure to provide required documentation of third party verification of sustainable and energy efficient features.

Reason:

The proposed changes would clearly establish penalties for failing to maintain appropriately experienced management for the 15-year federal compliance period. Changes would also clarify consequences for fraudulent representations to compliance monitors. Proposed changes would address presenting compliance problems, and new item (P) would clarify TCAC's expectations of ARRA recipients.

Section 10325(c)(5)(A)(10)

Proposed Change:

10. High speed internet service, with a minimum average download speed of 768 ~~kilobytes~~ kilobits/second must be made available to each unit for a minimum of 10 years, free of charge to the tenants, and available within 6 months of the project's placed-in-service date. Will serve letters or other documentation of internet availability must be documented within the application. If internet is selected as an option in the application it must be provided even if it is not needed for points.

2 points (3 points for rural projects)

Reason:

The proposed change would correct an error in stated standard for high-speed internet access.

Section 10325(c)(5)(B)

Proposed Change:

- (B) Projects that provide high-quality services designed to improve the quality of life for tenants are eligible to receive points for service amenities. Services must be appropriate to meet the needs of the tenant population served and designed to generate positive changes in the lives of tenants, such as by increasing tenant knowledge of and access to available services, helping tenants maintain stability and prevent eviction, building life skills, increasing household income and assets, increasing health and well being, or improving the educational success of children and youth.

Except as provided below, in order to receive points in this category, physical space for service amenities must be available when the development is placed-in-service. Services space must be located inside the project and provide sufficient square footage, accessibility and privacy to accommodate the proposed services.

The amenities must be available within 6 months of the project's placed-in-service date. Services Applicants must commit that services shall be provided ~~must be committed~~ for a period of 10-years.

All services must be of a regular and ongoing nature and provided to tenants free of charge (except for day care services or any charges required by law). Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. All organizations providing services for which the project is claiming service amenities points must have at least 24 months experience providing services to one of the target populations to be served by the project.

No more than 10 points will be awarded in this category.

For Large Family, Senior, and At-Risk Projects, amenities ~~Amenities~~ may include, but are not limited to:

1. Service Coordinator. Responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.).

Minimum ratio of 1 Full Time Equivalent (FTE) Service Coordinator to 600 bedrooms. 5 points

Minimum ration of 1 FTE Service Coordinator to 1,000 bedrooms 3 points

- ~~2. Case Manager. Responsibilities must include (but are not limited to) working with tenants to develop and implement an individualized service plan, goal plan or independent living plan. Minimum ratio of 1 FTE Case Manager to 100 bedrooms. 5 points~~

- ~~3.~~ 2. Other Services Specialist. Must provide individualized assistance, counseling and/or advocacy to tenants, such as to assist them to access education, secure employment, secure benefits, gain skills or improve health and

wellness. Includes, but is not limited to: Vocational/Employment Counselor, ADL or Supported Living Specialist, Substance Abuse or Mental Health Counselor, Peer Counselor, Domestic Violence Counselor.

Minimum ratio of 1 FTE Services Specialist to 600 bedrooms. 5 points

Minimum ratio of 1 FTE Services Specialist to 1,000 bedrooms 3 points

- ~~4.3.~~ Adult educational, health and wellness, or skill building classes. Includes, but is not limited to: Financial literacy, computer training, home-buyer education, GED classes, and resume building classes, ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes. Must provide a minimum of 60 hours of instruction each year (30 hours for small developments of 20 units or less). 5 points

84 hours of instruction per year (42 for small developments) 7 points

60 hours of instruction per year (30 for small developments) 5 points

36 hours of instruction per year (18 for small developments) 3 points

- ~~5. Health and wellness or skill-building classes. Includes, but is not limited to: ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes. Must provide a minimum of 60 hours of instruction each year (30 hours for small developments of 20 units or less).~~ 5 points

- ~~6. Health services provided by appropriately licensed organization or individual. Includes but is not limited to: health clinic, adult day health center, medication management services.~~ 5 points

- ~~7. Behavioral health services provided by appropriately licensed organization or individual. Includes but is not limited to: mental health services and treatment, substance abuse services and treatment.~~ 5 points

4. Health and wellness services and programs. Such services and programs shall provide individualized support to tenants (not group classes) and need not be provided by licensed individuals or organizations. Includes, but is not limited to visiting nurses programs, intergenerational visiting programs, senior companion programs.

100 hours of services per year for each 100 bedrooms 5 points

60 hours of services per year for each 100 bedrooms 3 points

40 hours of services per year for each 100 bedrooms 2 points

- ~~8.5.~~ Licensed child care. Must Shall be available 20 hours or more per week, Monday through Friday, to residents of the development. (Only for large family projects or other projects in which at least 30% of units are three bedrooms or larger). 5 points

- ~~9.6.~~ After school program for school age children. Includes, but is not limited to tutoring, mentoring, homework club, art and recreational activities. (Only for large family projects or other projects in which at least 30% of units are three bedrooms or larger). 5 points

<u>10 hours per week, Monday to Friday, offered throughout school year</u>	<u>5 points</u>
<u>6 hours per week, Monday to Friday, offered throughout school year</u>	<u>3 points</u>
<u>4 hours per week, Monday to Friday, offered throughout school year</u>	<u>2 points</u>

For Special Needs and SRO projects, amenities may include, but are not limited to:

7. Case Manager. Responsibilities must include (but are not limited to) working with tenants to develop and implement an individualized service plan, goal plan or independent living plan.

<u>Ratio of 1 FTE case manager to 100 bedrooms</u>	<u>5 points</u>
<u>Ratio of 1 FTE case manager to 160 bedrooms</u>	<u>3 points</u>

8. Service Coordinator or Other Services Specialist. Service coordinator responsibilities shall include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.). Other services specialist must provide individualized assistance, counseling and/or advocacy to tenants, such as to assist them to access education, secure employment, secure benefits, gain skills or improve health and wellness. Includes, but is not limited to: Vocational/Employment Counselor, ADL or Supported Living Specialist, Substance Abuse or Mental Health Counselor, Peer Counselor, Domestic Violence Counselor.

<u>Ratio of 1 FTE service coordinator or specialist to 360 bedrooms</u>	<u>5 points</u>
<u>Ratio of 1 FTE service coordinator or specialist to 600 bedrooms</u>	<u>3 points</u>

9. Adult educational, health and wellness, or skill building classes. Includes, but is not limited to: Financial literacy, computer training, home-buyer education, GED classes, and resume building classes, ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes.

<u>84 hours of instruction per year (42 for small developments)</u>	<u>5 points</u>
<u>60 hours of instruction per year (30 for small developments)</u>	<u>3 points</u>
<u>36 hours of instruction per year (18 for small developments)</u>	<u>2 points</u>

10. Health or behavioral health services provided by appropriately-licensed organization or individual. Includes but is not limited to: health clinic, adult day health center, medication management services, mental health services and treatment, substance abuse services and treatment.

5 points

11. Licensed child care. Shall be available 20 hours or more per week, Monday through Friday, to residents of the development. (Only for large family projects or other projects in which at least 30% of units are three bedrooms or larger).

5 points

12. After school program for school age children. Includes, but is not limited to tutoring, mentoring, homework club, art and recreational activities. (Only for large family projects or other projects in which at least 30% of units are three bedrooms or larger).

10 hours per week, Monday to Friday, offered throughout school year 5 points
6 hours per week, Monday to Friday, offered throughout school year 3 points
4 hours per week, Monday to Friday, offered throughout school year 2 points

For projects containing a combination of Special Needs units with Senior or Large Family units, applicants shall choose to provide services as described in items 1 through 6, or 7 through 12. Any services for which the applicant is requesting points must be available to all tenants in the project.

Items 1 through 9 12 are mutually exclusive. One proposed service may not receive points under two different categories. ~~Applicants may receive ten (10) points for item 4 or 5 if double the minimum hours of instruction is provided.~~

Documentation must be provided for each category of services for which the applicant is claiming service amenities points and must state the name and address of the organization or entity that will provide the services; describe the services to be provided; state the annual dollar value of the services; commit that services will be provided for a period of ~~40 years~~ at least one (1) year; commit that services will be available to tenants of the project free of charge (except for child care services or other charges required by law); name the project to which the services are being committed. Organizations providing in-kind or donated service must estimate the value of those services. Volunteer time may be valued at \$10 per hour.

Documentation may take the form of a contract for services, Memorandum of Understanding (MOU), or commitment letter on agency letterhead ~~committing to provide services for at least one year.~~

For projects claiming points for items 1, 2 or 3, a position description must be provided. Services delivered by the on-site Property Manager or other property management staff will not be eligible for points under any category (items 1 through 9).

Applications must include a services sources and uses budget clearly describing all anticipated income and expenses associated with the services program and that aligns with the services commitments provided (i.e. contracts, MOUs, letters, etc.). If project operating income would fund service amenities, the application's Service Amenities Sources and Uses Budget must be consistent with the application's Annual Residential Operating Expenses chart. Services costs contained in the project operating budget are not to be counted toward meeting CTCAC's minimum operating expenses required by Section 10327(g)(1).

All organizations providing services for which the project is claiming points must document that they have at least 24 months of experience providing services to the project's target population. Experience of individuals may not be substituted for organizational experience.

Evidence that adequate physical space for services will be provided must be documented within the application.

Reason:

The proposed changes would clarify that project applicants must commit to ten years of services, but that the service providers need only commit in writing to one year. In addition, new language emphasizes that the services budget must be consistent with the operating pro forma submitted with the application.

More substantive changes reorganize point-scoring service amenities into two groupings: (1) Large Family, Senior, and At-Risk projects, and (2) Special Needs and SRO projects. In consultation with services providers, TCAC concludes that services packages' appropriateness vary according to these two groupings.

TCAC also proposes combining adult and health and wellness classes, and combining health and behavioral services. TCAC staff has witnessed combinations of very similar classes and services for competitive advantage that are less beneficial to residents than a more varied service array.

Finally, TCAC staff proposes scoring gradations to accommodate a greater variety of less intensive services where appropriate.

Section 10325(c)(6)

Proposed Change:

(6) Sustainable building methods.

Maximum 8 10 points

~~A new construction or adaptive reuse project that exceeds Title 24 energy standards by at least 10%. For a rehabilitation project not subject to Title 24, that reduces energy use on a per square foot basis by 25% as calculated using a methodology approved by the California Energy Commission.~~ 4 points

~~For rehabilitation projects not subject to Title 24 requirements, use of fluorescent light fixtures for at least 75% of light fixtures or comparable energy lighting for the project's total lighting (including community rooms and any common space) throughout the compliance period.~~ 2 points

~~Use of Energy Star rated ceiling fans in all bedrooms and living rooms; or use of a whole house fan; or use of an economizer cycle on mechanically cooled HVAC systems.~~ 2 points

~~Use of water-saving fixtures or flow restrictors in the kitchen (2gpm or less) and bathrooms (1.5 gpm or less).~~ 1 point

~~Use of at least one High Efficiency Toilet (1.3 gpf) or dual-flush toilet per unit.~~ 2 points

~~Use of material for all cabinets, countertops and shelving that is free of added formaldehyde or fully sealed on all six sides by laminates and/or a low-VOC primer or sealant (150 g/l or less).~~ 1 point

~~Use of no-VOC interior paint (5 g/l or less).~~ 1 point

~~Use of CRI Green-label, low-VOC carpeting and pad and low-VOC adhesives 25 g/l or less.~~ 1 point

~~Use of bathroom fans in all bathrooms that exhaust to the outdoors and are equipped with a humidistat sensor or timer.~~ 2 points

~~Use of formaldehyde-free insulation.~~ 1 point

~~Use of at least one of the following recycled materials at the designated levels: a) cast-in-place concrete (20% flyash); b) carpet (25%); c) road base, fill or landscape amendments (30%).~~ 1 point

~~Design the project to retain, infiltrate and/or treat on-site the first one-half inch of rainfall in a 24-hour period.~~ 1 point

~~Include in the project specifications a Construction Indoor Air Quality Management plan that requires the following: a) protection of construction materials from water damage during construction; b) capping of ducts during construction; c) cleaning of ducts upon completion of construction; and d) for rehabilitation projects, implementation of a dust control plan that prevents particulates from migrating into occupied areas.~~ 2 points

~~Project design incorporates the principles of Universal Design in at least half of the project's units by including: accessible routs of travel to the dwelling units with accessible 34" minimum clear opening width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances.~~ 1-point

~~The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous.~~ 1-point

~~The project proposes to use Historic Tax Credits~~ 1-point

~~The project is located within a Qualified Census Tract (QCT) and the development would contribute to a concerted community revitalization plan as demonstrated by a letter from a local government official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization.~~ 1-point

~~To receive these points, the applicant and the project architect or mechanical engineer must certify in the application, which of the items will be included in the project's design and specifications, and further must certify at the project's placed-in-service date that the items have been included and/or that the energy efficiency standard has been met or exceeded. Projects receiving points under this category that fail to meet the requirement will be subject to negative points under Section 10325(c)(3) above.~~

(A) New Construction and Adaptive Reuse Projects: The applicant commits to develop the project in accordance with the minimum requirements of Develop and commit to certifying the project any one of the following programs: Leadership in Energy & Environmental Design (LEED for Homes); Green Communities; or the GreenPoint Rated Multifamily Guidelines. 8 5 points

(B) For project's receiving points under section 10325(c)(6)(A), additional points for energy efficiency beyond the requirements in Title 24, Part 6, of the California Building Code (the Standards) under which the project is constructed, shall be awarded as follows:

<u>Percentage better than the current Standards</u>	<u>Low-Rise Multifamily (3 or fewer habitable stories)</u>	<u>High-Rise Multifamily (4 or more habitable stories)</u>
<u>20 percent</u>	<u>2 points</u>	<u>3 points</u>
<u>25 percent</u>	<u>3 points</u>	<u>5 points</u>
<u>30 percent</u>	<u>5 points</u>	

- (C) For project's receiving points under section 10325(c)(6)(A), applicants may be awarded points for committing to developing their project beyond the minimum requirements of the green building program chosen in section 10325(c)(6)(A):

<u>LEED for Homes</u>	<u>Silver</u>	<u>Gold</u>	<u>Platinum</u>
<u>Green Point Rated</u>	<u>100</u>	<u>125</u>	<u>150</u>
	<u>2 points</u>	<u>3 points</u>	<u>5 points</u>

Reason:

TCAC staff is proposing to discontinue the current sustainable building options menu for competitive scoring. In part, the proposed change is precipitated by 2010 and 2011 changes to basic California energy code and the CalGreen Code. In combination, these two generally applicable codes supersede many of TCAC's current sustainable building scoring factors.

Rather than develop a new optional features menu, TCAC staff proposes that five (5) points of the new 10-point category could be earned by developing new projects to one of three sustainable construction standards. Projects developed to these standards would be extremely resource efficient and healthy for the project's residents. In addition to these five points, staff proposes alternative paths to an additional five points for energy efficiency as described below.

Proposed new paragraph (B) would provide additional points for new construction projects exceeding Title 24 energy efficiency standards. Most projects could earn a full five points by exceeding Title 24 by 30 percent. High-rise developments, as defined, could earn the full five points by exceeding Title 24 by 25 percent. Staff proposes this lower standard in light of the inherent energy efficiency limitations posed by high-rise development. Such projects must expend energy simply circulating air and maintaining consistent temperatures. In addition, such projects have limited ability to offset net energy consumption through on-site generation.

The proposed changes would provide yet another path to ten points for new construction projects. Paragraph (C) would reward those projects that develop to a higher level of one of two sustainability standards. Point gradations accommodate an intermediate standard combined with a lesser degree of energy efficiency under paragraph (B). In this way, TCAC would provide sponsors with options to garner points, all of which would be beneficial to residents of developed tax credit projects.

Section 10325(c)(6); new paragraphs (D) and (E)

Proposed Change:

- (D) Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the building(s) based on existing conditions. Points are awarded based on the building(s) age and percentage decrease (or improvement in energy efficiency) in the building's Home Energy Rating System II estimated annual energy use post rehabilitation:

<u>Improvement Over Current</u>	<u>Pre-1980 Code Bldg</u>	<u>1980-2000 Code Bldg.</u>	<u>2001-Present Code Bldg.</u>
<u>15 percent</u>	<u>1 point</u>	<u>3 points</u>	<u>5 points</u>
<u>20 percent</u>	<u>3 points</u>	<u>5 points</u>	<u>7 points</u>
<u>25 percent</u>	<u>5 points</u>	<u>7 points</u>	<u>10 points</u>
<u>30 percent</u>	<u>7 points</u>	<u>10 points</u>	

- (E) Additional Rehabilitation Project Measures: For project's receiving points under section 10325(c)(6)(D) applicants may be awarded points for committing to developing, and/or managing, their project with one more of the following:

Projects shall include photovoltaic (PV) generation that offsets tenant loads

3 points

Project shall implement sustainable building management practices including:

- (1) Develop a project-specific maintenance manual including replacement specifications and operating information of all energy and green building features, and

- (2) Certify building management staff in sustainable building operations per BPI Multifamily Building Operator or equivalent training program, and

- (3) Undertake formal building systems commissioning, retro-commissioning or re-commissioning as appropriate.

3 points

Projects shall sub-meter centralized hot water systems for all tenants

3 points

Reason:

This section would establish a scoring system for proposed rehabilitation projects. The five-point standards in proposed Section 10325(c)(6)(A) would apply to new construction projects or adaptive reuse projects only. Energy efficiency scoring for rehabilitation projects would be measured against the property's current energy efficiency rating, would account for the original development's era. A given percentage improvement would be more difficult to obtain for a more recent vintage property. Therefore, significantly improving the energy efficiency of more recent properties would garner more points than the same percentage improvement for older properties.

Older (pre-1980 code) properties would only have seven (7) points available through energy efficiency improvements. The balance of the ten (10) sustainable building points would be available to such projects under the following proposed subsection (E).

The proposed changes would also make an additional three (3) points available to rehabilitation projects in order to compete for the full 10 sustainable building points. The options would enhance the systems' performance over time, resulting in greater efficiency and cost savings. Each of the three listed items would add value to the ongoing energy efficiency of a rehabilitated project and would warrant equal points.

Section 10325(c)(6); new paragraph (F)

Proposed Change:

- (F) Compliance and Verification:

- (1) For preliminary reservation applications, applicants must include a certification from the project architect that the sustainable building methods of Section 10325(c)(6) have been incorporated into the project, if applicable.

- (2) For placed-in-service applications to receive points under section 10325(c)(6)(A) and (C), the applicant must submit the appropriate required third party verification documentation showing the project has met the requirements for the relevant program.
- (3) For placed-in-service applications to receive points under section 10325(c)(6)(B), the applicant must submit the appropriate California Energy Commission compliance form for the project which shows the necessary percentage improvement better than the appropriate Standards. This compliance form must be the output from the building(s) modeled “as built” and reflect all relevant changes that impact the building(s) energy efficiency that were made after the preliminary reservation application. The compliance form must be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Plans Examiner (CEPE). Documentation for measures that require verification by California Home Energy Rating System (HERS) Raters must also be submitted.
- (4) For placed-in-service applications to receive points under section 10325(c)(6)(D), the applicant must submit the California Energy Commission HERS II energy consumption and analysis report, developed using the Home Energy Retrofit Coordinating Committee’s multifamily protocols, which shows the pre- and post- rehabilitation HERS II estimated annual energy use demonstrating the required improvement and is signed by a qualified HERS Rater.
- (5) For placed-in-service applications to receive points under section 10325(c)(6)(E) the applicants must submit the following documentation:
- (i) For projects including photovoltaic generation that offsets tenant loads, the applicant must submit a Multifamily Affordable Solar Home (MASH) Program field verification certification form signed by the project’s solar contractor and a qualified HERS Rater, and a copy of the utility interconnection approval letter.
 - ii) For sustainable building management practices implemented by appropriately trained onsite staff, the applicant must submit a copy of the energy management and maintenance manual, provide evidence onsite staff has been certified in green building operations and maintenance through the Building Performance Institute Multifamily Energy Efficient Building Operator or equivalent training, and submit the building commissioning plan drafted in accordance with the California Commissioning Collaborative’s best practice recommendations for existing buildings or the GreenPoint Rated Multifamily Commissioning requirements. Owner certification of ongoing sustainable building management practices will be provided annually in accordance with Section 10337(c)(3)(A).
 - iii) For sub-metered central hot water systems, the applicant must demonstrate compliance with CPUC regulations for hot water sub-metering and billing by submitting a copy of the Utility Service Agreement from project’s local utility provider.
- (6) Failure to produce the appropriate documentation for (2) through (5) of this subsection may result in an award of negative points for the development team.

Reason:

The proposed changes would clearly state performance expectations of sponsors who receive credit awards after receiving various sustainable building points. Items 1 through 5 describe the documentation requirements associated with each scoring option, while item 6 notes that failure to document relevant performance may result in negative points for the development team.

Section 10325(c)(8):**Proposed Change:**

- (8) Readiness to Proceed. 20 points will be available to projects that meet ALL of the following, and are able to begin construction within 180 days of the Credit Reservation, as evidenced by submission, within that time, of: an executed construction contract, a construction lender trade payment breakdown of approved construction costs, recorded deeds of trust for all construction financing, a limited partnership agreement executed by the general partner and the investor providing the equity, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) and notice to proceed delivered to the contractor. If no construction lender is involved, evidence must be submitted within 180 days after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred.

In addition to the above, all applicants receiving any readiness points under this subsection must provide an executed Letter of Intent (LOI) from the project's equity partner within 90 days of the Credit Reservation. The LOI must include those features called for in the CTCAC application. Failure to meet these two timelines shall result in rescission of the Tax Credit Reservation. The following must be delivered:

- (A) enforceable commitment for all construction financing, as evidenced by executed commitment(s) and payment of commitment fee(s);
- (B) evidence, as verified by the appropriate officials, of site plan approval and that all local land use environmental review clearances (CEQA and NEPA) necessary to begin construction are either finally approved or unnecessary;
- (C) evidence of all necessary public approvals except building permits; and
- (D) evidence of design review approval.

For paragraphs (B), (C), and (D) an appeal period may run up to 30 days beyond the application due date. The applicant must provide proof that either no appeals were received, or that any appeals received during that time period were resolved within that 30-day period to garner local approval readiness points.

In the event that one or more of the above criteria have not been met, 5 points may be awarded for each one that has been met, up to a maximum of 15 points. The 180-day requirements shall not apply to projects that do not obtain the maximum points in this category, ~~for any items for which points are not awarded.~~

Reason: The proposed change would require an executed construction contract and lender-approved construction budget to be provided to TCAC at the readiness deadline rather than at final reservation. These two items are in existence at the readiness deadline and a staff review a year later at final reservation has little benefit. Any questions arising from a staff review should be presented to the project owner earlier than at final reservation. As stated above under Section 10322(i), staff also proposes to delete redundant final reservation requirements, including construction deeds of trust, partnership agreement, and building permits. The proposed deletion “for any items for which points are not awarded” removes language that implies applicants awarded less than 20 points may be required to submit readiness documentation. For applicants awarded less than 20 points TCAC does not require submission of readiness documentation 180 days after the reservation date.

Section 10325(c)(9)

Proposed Change:

- (9) Miscellaneous Federal and State Policies Maximum 2 points
- (A) State eCredit sSubstitution. For applicants that agree to exchange Federal Tax Credits for State Tax Credits in an amount that will yield equal equity as if only Federal Credits were awarded. 2 points
- (B) Universal Design. Project design incorporates the principles of Universal Design in at least half of the project's units by including: accessible routs of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances. 1 point
- (C) Smoke Free Residence. The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous. 1 point
- (D) Historic Preservation. The project proposes to use Historic Tax Credits 1 point
- (E) Qualified Census Tract. The project is located within a Qualified Census Tract (QCT) and the development would contribute to a concerted community revitalization plan as demonstrated by a letter from a local government official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization. 1 point

Reason:

The proposed changes would relocate current point-earning features from sustainable building methods (scoring subsection (c)(6)) to the scoring subsection that currently rewards an applicant's willingness to exchange State for federal credit. The new scoring subsection would address a variety of policy objectives, including the current State credit exchange objective. No other substantive change is made to the imported scoring items. State credit substitution would continue to be weighted more heavily than each of the other imported items. This would continue to enable TCAC to substitute State credits when necessary.

Section 10325(c)(10)(A)

Proposed Change:

- (10) Tie Breakers
- If multiple applications receive the same score, the following tie breakers shall be employed:
- First, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and
- Second, the highest of the sum of the following two ratios:

- (A) Committed permanent public funds, as described in Section 10325(c)(1)(C), defraying residential costs to total residential project development costs. Except where a third-party funding commitment is explicitly defraying non-residential costs only, public funds shall be discounted by the proportion of the project that is non-residential. Permanent funds shall be demonstrated through documentation including but not limited to public funding award letters, committed land donations, or documented project-specific local fee waivers.

The numerator of this ratio may include permanent funding committed by a Community Foundation or a charitable foundation where a public body appoints a majority of the voting members. Additionally the numerator may include the value of land and improvements contributed by an organization formed under Internal Revenue Code Section 501(c), so long as the contributed asset has been held by the organization for at least 10 years. Such foundation or organization contributions must be in the form of foundations so long as the funding is a grant or residual receipts loan. Local land donations include land leased from a public entity, or permitted foundation or organization for a de minimis annual lease payment. Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits.

The numerator of projects with public operating- or rental-subsidies may be increased by 25 percent (25%) of the percentage of proposed tax credit assisted units benefitting from the subsidy. Such subsidies must be received from one or more of the following programs: Project Based Section 8; PRAC (Section 202 and 811); USDA Section 521 Rental Assistance; Shelter Plus Care; McKinney Act Supportive Housing Program Grants; Shelter Plus Care; California Mental Health Services Act operating subsidies; and Public Housing Annual Contributions contracts. Applicants seeking scoring consideration for other public sources of operating- or rent-subsidies must receive written Executive Director approval prior to the application due date.

Reason:

The proposed changes would broaden the types of foundation contributions that would garner competitive points under the final tiebreaker. A charitable foundation governed by a board, the majority of which are appointed by a local governmental agency would qualify under the proposed language. Such a governing structure indicates close coordination with governmental agencies and may be assumed to be serving the public interest.

A second substantive change would competitively score project-based operating- or rent-subsidies tied to a specific number of the project's units. The public funds ratio's numerator would be increased by 25 percent (25%) of the subsidized units' proportion in the project. For example, if a project had project based Section 8 assistance committed to 25% of the project's units, then the final tiebreaker's public funds numerator would be increased by 25% of 25%, or 6.25%. A project with project-based rental assistance for 100% of the project's units would receive a numerator increase of 25% of 100%, or 25%.

Multiplying the public funds numerator would continue to reward permanent public funding sources defraying development costs, while marginally increasing the competitiveness of projects with project-based operating- or rental-subsidies as well.

Finally, new language would explicitly codify the long-standing TCAC practice of awarding public funds points for private loans that capitalize rent-subsidy revenue streams. New language also would establish underwriting parameters to stem potential competitive abuses.

Section 10325(f)(7)

Proposed Change:

- (7) Minimum construction standards. For preliminary reservation applications, applicants ~~Applicants~~ shall provide a statement of their intent to utilize landscaping and construction materials which are compatible with the neighborhood in which the proposed project is to be located, and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected. Additionally, the statement of intent shall note that the following minimum specifications will be incorporated into the project design for all new construction and rehabilitation projects:
- (A) Energy Efficiency. All new construction buildings shall be fifteen percent (15%) better than the current Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24). All rehabilitated buildings shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions, with at least a 10% post-rehabilitation improvement over existing conditions energy efficiency achieved for each building.
 - (B) CALGreen Compliance. New construction high-rise buildings shall meet the mandatory provisions of the CALGreen Code (Title 24, Part 11 of the California Code of Regulations). All rehabilitation projects, including high-rise rehabilitation projects, are required to meet the mandatory provisions of the CALGreen Code for any building product or system being replaced as part of the scope of work.
 - (C) Landscaping. A variety of plant and tree species that require low water use shall be provided in sufficient quantities based on landscaping practices in the general market area and low maintenance needs. Projects shall follow the requirements of the state Model Water Efficient Landscape Ordinance (<http://www.water.ca.gov/wateruseefficiency/landscapeordinance/>) unless a local landscape ordinance has been determined to be at least as stringent as the current model ordinance.
 - ~~(B)~~(D) Roofs. Roofing shall carry a three-year subcontractor guarantee and at least a 20-year manufacturer's warranty.
 - ~~(C)~~(E) Exterior doors. Insulated or solid core, flush, paint or stain grade exterior doors shall be made of metal clad or hardwood faces, with a standard one-year guarantee and all six sides factory primed.
 - ~~(D)~~(F) Appliances. ~~Energy Star~~ ENERGY STAR rated appliances, including but not limited to, refrigerators, dishwashers, and clothes washers shall be installed when such appliances are provided within Low-Income Units and/or in on-site community facilities unless waived by the Executive Director.
 - ~~(E)~~(G) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blinds.
 - ~~(F)~~(H) Water heater. For units with individual tank-type water heaters, minimum capacities are to be 30 gallons for one- and two-bedroom units and 40 gallons for three-bedroom units or larger. ~~All individual water heaters shall be equipped with pressure and temperature relief valves unless waived by the Executive Director.~~
 - ~~(G)~~(I) Floor coverings. For light and medium traffic areas vinyl or linoleum shall be at least 3/32" thick; for heavy traffic areas it shall be a minimum 1/8" thick. A hard, water resistant, cleanable surface shall be required for all kitchen and bath areas. Carpet complying with U.S. Department of Housing and Urban Development/Federal Housing Administration UMD, or alternatively, cork, bamboo, linoleum, or hardwood floors shall be provided in all other floor spaces unless this requirement is specifically waived by the Executive Director.
 - ~~(H)~~(J) Use of Low Volatile Organic Compound (VOC) paints and stains (Non-flat: 150 g/l or less, Flat: 50 g/l or less) for all interior surfaces where paints and stains are applied.
 - (K) All fiberglass-based insulation shall meet the Greenguard Emission Criteria for Children and Schools (http://greenguard.org/en/CertificationPrograms/CertificationPrograms_childrenSchools.aspx).

~~A project proposing rehabilitation of existing structures shall be exempt from the provisions of subsections (D) and (F) above. If an rehabilitation applicant does not propose to meet the other requirements of this subsection, its Capital Needs Assessment must show that the standards not proposed to be met are either unnecessary or excessively expensive. All exemptions must be approved in advance by the Executive Director.~~

Compliance and Verification: For placed-in-service applications, for subsection (A), applicants with new construction projects must submit the appropriate California Energy Commission compliance form for the project which shows the necessary percentage improvement better than the appropriate Standards. For subsection (A) applicants with rehabilitation projects, the applicant must submit the California Energy Commission HERS II energy consumption and analysis report which shows the pre- and post-rehabilitation HERS II estimated annual energy use demonstrating the required improvement, in their placed-in-service package. For subsections (B) through (K) applicants shall submit third party documentation from one of the following sources confirming the existence of items, measures, and/or project characteristics: a certified HERS Rater, a certified GreenPoint rater, or a US Green Building Council certification. Failure to produce appropriate and acceptable third party documentation for (A) through (K) of this subsection may result in negative points.

Reason:

The proposed changes would establish an energy-efficiency standard for new construction projects of 15 percent (15%) better than current State energy code. In addition, rehabilitation projects would be required to improve the property's energy efficiency by at least 10 percent (10%). These standards would assure that projects will be very energy efficient upon completion and into the future.

TCAC expects state energy code to continue becoming more rigorous over time. Projects developed today would continue to be energy efficient during their 55-year compliance period, although not as energy efficient as future projects are expected to be. Each of the additional requirements is intended to further the State's energy efficiency goals as articulated by the California Energy Commission and California's Public Utilities Commission. The proposed verification provisions would assure that qualified third parties are consistently reporting.

Section 10325(g)(4)(I):

Proposed Change:

- (I) Where services are required as a condition of occupancy, special attention shall be paid to the assessment of service costs as related to maximum allowable Credit rents. A third party tax professional's opinion as to compliance with IRC Section 42 may be required by the Executive Director;

Reason:

TCAC staff is consistently proposing that opining tax professionals be unrelated third parties. This change seeks to separate the interests of the sponsor and the opining tax professional.

Section 10325(h)

Proposed Change:

- (h) Waiting List. At the conclusion of the last reservation cycle of any calendar year, and at no other time, the Committee may establish a Waiting List of pending Eligible Project applications already scored, ranked and evaluated in anticipation of utilizing any Tax Credits that may be returned to

the Committee, and/or that have not been allocated to projects with the Set-Asides or Geographic Regions for which they were intended. The Waiting List shall expire on the date specified in the Committee's resolution establishing the Waiting List. If no date is specified, the Waiting List shall expire at midnight on December 31 of the year the list is established. During periods without a waiting list, complete credit awards returned by successful geographic apportionment competitors shall be returned to the apportionment of origin.

Selections from the Waiting List will be made as follows:

- (1) If Credits are returned from projects originally funded under ~~current-year~~ Set-Asides or Geographic Apportionments, applications qualifying under the same Set-Aside or Geographic Region will be selected in the order of their ranking.

Reason:

New proposed language would assign whole awards returned by any geographic apportionment recipient project back to the geographic region of origin. This protocol would be in effect regardless of when the whole award is recovered by TCAC. By regulation, all other credits returned in the absence of a waiting list would continue to go either to the top of the next year's set-aside and apportionment cascade, or to the supplemental set-aside. These credits would include portions of original awards, or any set-aside award.

Under the second proposed revision, when TCAC establishes a waiting list, the first priority would be to all returned credits to their set-aside or geographic region of origin. For practical purposes, over time this would become the only practice under an active waiting list. Only returned credits awarded to rare "priority projects" or general waiting list projects would escape this protocol. Unless a set-aside or region had no remaining waiting list projects would TCAC not move on to the priorities under paragraphs 10325(h)(2) and (3).

Section 10326(e)(2):

Proposed Change:

- (e) Additional application requirements. Applications submitted pursuant to this Section shall provide the following additional information:
 - (1) the name, phone number and contact person of the bond issuer; and,
 - (2) verification provided by the bond issuer of the availability of the bond financing, the actual or estimated bond issuance date, and the actual or estimated percentage of aggregate basis (including land) financed or to be financed by the bonds, and a certification provided by a third party tax professional as to the expected or actual aggregate basis (including land) financed by the proceeds of tax exempt bonds;
 - (3) the name, phone number and contact person of any entity providing credit enhancement and the type of enhancement provided.

Reason:

TCAC staff is consistently proposing that certifying tax professionals be unrelated third parties. This change seeks to separate the interests of the sponsor and the opining tax professional.

Section 10327(c)(1)

Proposed Change:

- (c) Reasonable cost determination. IRC Section 42(m) requires that the housing Credit dollar amount allocated to a project not exceed the amount the housing Credit agency determines is necessary for the financial feasibility of the project. The following standards shall apply:
 - (1) Builder overhead, profit and general requirements. An overall cost limitation of fourteen percent (14%) of the cost of construction shall apply to builder overhead, profit, and general requirements, excluding builder's general liability insurance. For purposes of builder overhead and profit, the cost of construction includes offsite improvements, demolition and site work, structures, prevailing wages, and general requirements. For purposes of general requirements, the cost of construction includes offsite improvements, demolition and site work, structures, and prevailing wages. Project developers shall not enter into fixed-price contracts that do not account for these restrictions.

Reason:

The proposed change would clearly state that fixed price contracts that do not account for the stated limits are prohibited. TCAC has confronted instances where developers have entered into fixed-price contracts that oblige developers to deliver payments for overhead and profit exceeding the regulatory limits. The proposed language would codify that such contracts are contrary to the policy intent of the regulation.

Section 10327(c)(5)(B)

Proposed Change:

- (5) Threshold Basis Limits. The Committee shall limit the unadjusted eligible basis amount, used for calculating the maximum amount of Tax Credits to amounts published on its website in effect at the time of application, and in accordance with the definition in Section 10302(nn) of these regulations. This limitation shall not apply for purposes of calculating the final Credit amount upon issuance of tax forms, including projects that have already received Reservation or allocations of Tax Credits.

Exceptions to limits.

- (A) Increases in the Threshold basis limits shall be permitted as follows for projects applying under Section 10325 or 10326 of these regulations. The maximum increase to the unadjusted eligible basis of a development permitted under this subsection shall not exceed thirty-nine percent (39%).
 - A twenty percent (20%) increase to the unadjusted eligible basis for a development that is required to pay state or federal prevailing wages;
 - A seven percent (7%) increase to the unadjusted eligible basis for a new construction development where parking is required to be provided beneath the residential units (but not "tuck under" parking);
 - A two percent (2%) increase to the unadjusted eligible basis where a day care center is part of the development;
 - A two percent (2%) increase to the unadjusted eligible basis where 100% of the units are for special needs populations
 - A ten percent (10%) increase to the unadjusted eligible basis for a development wherein at least 95% of the project's upper floor units are serviced by an elevator.

With the exception of the prevailing wage increase and the special needs increase, in order to receive the basis limit increases by the corresponding percentage(s) listed above, a certification signed by the project architect shall be provided within the application confirming that item(s) listed above will be incorporated into the project design.

- (B) A further ~~four percent (4%)~~ increase of up to ten percent (10%) in the Threshold Basis Limits will be permitted for projects applying under Section 10325 or Section 10326 of these regulations that ~~either (a) exceed Title 24 standards by at least 35 percent, or (b) include three~~ one or more of the following energy efficiency/resource conservation/indoor air quality items:
- (1) ~~Exceed Title 24 standards by at least 15%.~~ Project shall have onsite renewable generation estimated to produce 50 percent (50%) or more of annual electricity use (dwelling unit and common area meters combined). If the combined available roof area of the project structures, including carports, is insufficient for provision of 50% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. Five percent (5%)
 - (2) Project shall have onsite renewable generation estimated to produce 75 percent (75%) or more of annual electricity. If the combined available roof area of the project structures, including carports, is insufficient for provision of 75% of annual electricity use, then the project shall have onsite renewable generation based on at least 90 percent (90%) of the available solar accessible roof area. Available solar accessible area is defined as roof area less north facing roof area for sloped roofs, equipment, solar thermal hot water and required local or state fire department set-backs and access routes. Two percent (2%)
 - (3) Newly constructed project buildings shall be forty-five percent (45%) or more energy efficient than the current Energy Efficiency Standards (California Cod of Regulations, Part 6 of Title 24). Four percent (4%)
 - (4) Rehabilitated project buildings shall have eighty percent (80%) decrease (or improvement in energy efficiency) in the building's Home Energy Rating System II estimated annual energy use post rehabilitation, over existing conditions. Four percent (4%)
 - (5) Cooling without refrigerant in climate zones 4, 8, 9, or 10 (excluding direct evaporative cooling) where cooling is required or part of standard local practice. This must be accomplished according to the procedures and protocols of the proposed Los Angeles Housing Department's Natural Cooling Reference Standard. Two percent (2%)
 - (6) Irrigate only with reclaimed water, greywater, or rainwater (excepting water used for Community Gardens). One percent (1%)
 - (7) Community Gardens of at least 60 square feet per unit. Permanent site improvements that provide a viable growing space within the project including solar access, fencing, watering systems, secure storage space for tools, and pedestrian access. One percent (1%)
 - (8) Install bamboo, cork, salvaged or FSC-Certified wood, natural linoleum, natural rubber, or ceramic tile in all kitchens, living rooms, and bathrooms (where no VOC adhesives or backing is also used). One percent (1%)
 - (9) Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, ceramic tile, or natural linoleum in all common areas. Two percent (2%)

(10) Meet all requirements of the U.S. Environmental Protection Agency Indoor Air Plus Program. Two percent (2%)

~~Use tankless water heaters, a high efficiency condensing boiler (92% AFUE or greater), or a solar thermal domestic hot water pre-heating system.~~

~~Use a Minimum Efficiency Report Value (MERV) 8 or higher air filter for HVAC systems that introduce outside air.~~

~~Irrigation system using only reclaimed water and/or captured rainwater.~~

~~Recycle at least 75% of construction and demolition waste (measured by either by weight or volume).~~

~~Install natural linoleum, natural rubber, or ceramic tile for all kitchens and bathrooms (where no VOC adhesives or backing is also used).~~

~~Install bamboo, stained concrete, cork, salvaged or FSC-Certified wood, ceramic tile, or natural linoleum in all living rooms or 50% of all common areas.~~

~~Install CRI Green Label Plus Carpet, or no carpet, in all bedrooms.~~

~~Vent kitchen range hoods to the exterior of the building in at least 80% of units.~~

~~Use at least four recycled products listed in the Construction, Flooring, or Recreation section of the California Integrated Waste Management Boards Recycle Content Products Database www.ciwmb.ca.gov/RCP.~~

Compliance and Verification: For placed-in-service applications, in order to receive the four percent (4%) increase to the basis limit, the application shall contain a certification from the project architect confirming a HERS Rater, a GreenPoint rater, or an accredited LEED for Homes Green Rater verifying that item(s) listed above will be have been incorporated into the project design. Additionally, for item (6) a management plan must be submitted and must be available to onsite staff. Failure to incorporate the features, or to submit the appropriate documentation may result in a reduction in credits awarded and/or an award of negative points.

- (B) Additionally, for projects applying under Section 10326 of these regulations, an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project's units that will be income and rent restricted at or below 50 percent (50%) but above thirty-five percent (35%) of Area Median Income (AMI). An increase of two percent (2%) shall be available for every 1% of the project's units that will be restricted at or below 35% of AMI. In addition, the applicant must agree to maintain the affordability period of the project for 55 years.
- (D) Projects requiring seismic upgrading of existing structures, and/or projects requiring toxic or other environmental mitigation may be permitted an increase in basis limit equal to the lesser of the amount of costs associated with the seismic upgrading or environmental mitigation or 15% of the project's unadjusted eligible basis to the extent that the project architect certifies in the application to the costs associated with such work.
- (E) ~~Further, the Executive Director, in his/her sole discretion, may permit a further increase in basis limits to a maximum of 5%, where distributive energy technologies such as microturbines and/or renewable energy sources such as solar will be implemented. To obtain this increase, an applicant must submit evidence of the cost of the system and the operating cost savings to be created through the use of the technology, throughout the time of the compliance period.~~

Reason:

The proposed changes would more accurately account for various energy- and resource-efficiency features when permitting increases to a project's threshold basis limits. Each item would provide significant energy or resource efficiency and/or health benefits to the residents. The percentage increase is proportionate to the estimated additional project costs associated with each feature. The new list would replace the current list, and would replace items which are either now required by code, do not add significantly to cost, or are not meaningfully beneficial to the project or the State as a whole.

Section 10327(c)(9):**Proposed Change:**

- (9) Applicant resources. If the applicant intends to finance part or all of the project from its own resources (other than deferred fees), the applicant shall be required to prove, to the Executive Director's satisfaction, that such resources are available and committed solely for this purpose, including an audited certification from a third party certified public accountant that applicant has sufficient funds to successfully accomplish the financing.

Reason:

Consistent with earlier proposed changes, this provision would require referenced CPAs to be independent third parties.

Section 10328(d)(1):**Proposed Change:**

- (d) Carryover Allocations. Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation shall satisfy either the Placed-in-service requirements pursuant to subsection 10322(i)(2) or carryover allocation requirements in the year the reservation is made, pursuant to IRC Section 42(h)(1)(E) and these regulations, as detailed below. An application for a carryover allocation must be submitted by October 31 of the year of the reservation, together with the applicable allocation fee, and all required documentation, except that the time for meeting the "10% test" and submitting related documentation, and owning the land, will be no later than twelve (12) months after the date of the carryover allocation.
- (1) Additional documentation and analysis. The Executive Director may request, and the holder of a Credit reservation shall provide, additional documentation required for processing a carryover allocation. Following submission of carryover allocation documents, the Executive Director shall conduct a financial feasibility and cost reasonableness analysis. Substantive changes to the approved application, in particular, changes to the financing plan or costs must be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. Once the analysis is satisfactorily concluded, a carryover allocation of Tax Credits shall be made in an amount not to exceed the maximum dollar amount of Credit stated in the Preliminary Reservation. For second round Credit reservations, a financial feasibility and cost reasonableness analysis may be conducted at the time Readiness documentation is submitted. Second round applicants not required to submit Readiness documentation are not exempt from this requirement.
- (2) In addition to the requirements of the Internal Revenue Code, to receive a carryover allocation an applicant shall provide evidence that applicant has maintained site control from the time of the initial application and, if the land is not already owned, will continue to maintain site control until the time for submitting evidence of the land's purchase.

- (3) Certification. The Committee shall require a certification from an applicant that has received a reservation, that the facts in the application continue to be true before a carryover allocation is made.

Reason: The proposed addition clarifies that TCAC staff may perform financial feasibility and cost reasonable analysis at the readiness deadline for second round projects. Typically the carryover allocation deadline is roughly 30 days after the preliminary reservation date for second round awards, prior to the 90-day Letter of Intent (LOI) requirement. Most second round projects have yet to finalize financing proposals with equity investors at carryover, and as a result do not have updated information to provide for TCAC staff review. Staff proposes to set the date for this review at the existing Readiness deadline.
